3337

# CERTIFICATE.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

## No. 565.

PLYMOUTH CORDAGE COMPANY, A. B. KELLEY, NEWTON WAGON COMPANY, AND MAGGIE O'BRIEN

*vs.*

J. A. SMITH AND CLINTON F. IRWIN, JUDGE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 26, 1904.

(19,216.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1904.

1 United States Circuit Court of Appeals, Eighth Circuit.

*In re* PLYMOUTH CORDAGE COMPANY, A. B. KELLEY, NEWTON WAGON COMPANY, and MAGGIE O'BRIEN, Petitioners. No. 40, Original.

On petition to revise in matter of law certain proceedings had in the district court of Kingfisher county, Oklahoma.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on the twenty-second day of January, 1904, certifies that from the record on file in the above entitled cause, which is pending in this court on an original petition to revise in matter of law certain proceedings in bankruptcy had in the district court of Kingfisher county, Oklahoma, the following is made to appear:

(1.) By section 24 of the national bankruptcy law, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898. (30 Stat. 544) it is provided:

"SEC. 24. Jurisdiction of appellate courts.—*a.* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the
2 District of Columbia. *b.* The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved." (3 U. S. Comp. Stat., 3431)

(2.) By an order of the Supreme Court of the United States, entered May 11, 1891, it is provided "that under section 15 of the act approved March 3, 1891 entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," * * * the territories of * * * Oklahoma * * * are assigned to the eighth judicial circuit." (139 U. S. 707.)

(3.) On June 15, 1903, the petitioners herein Plymouth Cordage Company, A. B. Kelley, Newton Wagon Company and Maggie O'Brien, filed in this court a petition to superintend and revise in matter of law the proceedings of the district court of Kingfisher county, Oklahoma, in the following particulars:

(*a.*) On March 23, 1903, a petition was pending in said court to adjudge J. A. Smith an involuntary bankrupt. The district court on that date permitted three creditors to withdraw from said petition.

(*b.*) On April 6, 1903, the district court of Kingfisher county, Oklahoma, sustained a motion to dismiss a petition in involuntary bankruptcy theretofore filed against J. A. Smith.

(*c.*) On April 6, 1903, the district court of Kingfisher county, Oklahoma, denied the prayer of certain creditors of J. A. Smith asking leave to join in the petition in involuntary bankruptcy against J. A. Smith.

(*d.*) On April 14, 1903, the district court of Kingfisher county, Oklahoma, refused to permit certain creditors of J. A. Smith to file a motion asking the court to set aside the order of April 6, 1903, dismissing the petition in involuntary bankruptcy against
3 J. A. Smith.

(4.) The petitioners herein pray this court to set aside each and all of the foregoing orders so entered by the district court of Kingfisher county, Oklahoma.

And the said United States circuit court of appeals for the eighth circuit further certifies that the following question of law, among others, arises and is presented in this case and that the decision thereof is indispensable to a correct decision of the cause, and to that end it desires the instruction of the Supreme Court of the United States upon the following question and proposition of law:

Does the United States circuit court of appeals for the eighth circuit have the jurisdiction to superintend and revise in matter of law the proceedings of the district court of Kingfisher county, Oklahoma, in bankruptcy?

In witness whereof, the undersigned judges, holding the said United States circuit court of appeals for the eighth circuit, have hereunto set their hands this 22nd day of January, A. D. 1904, at St. Louis, Missouri, and ordered that the foregoing certificate be filed in said United States circuit court of appeals and by the clerk of said court duly forwarded to the Supreme Court of the United States.

WALTER H. SANBORN,
AMOS M. THAYER,
WILLIAM C. HOOK,
*Judges of the United States Circuit Court of Appeals for the Eighth Circuit.*

4 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the matter of Plymouth Cordage Company, A. B. Kelley, Newton Wagon Company and Maggie O'Brien, petitioners,

No. 40 original, December term, 1903, was duly filed and entered of record in my office by order of said circuit court of appeals and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this twenty-second day of January, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk United States Circuit Court of Appeals*
*for the Eighth Circuit.*

5 [Endorsed:] U. S. circuit court of appeals, eighth circuit. December term, 1903. No. 40 Original. *In re* Plymouth Cordage Company, *et al.*, petitioners. Certificate of question to the Supreme Court of the United States. Filed Jan. 22 1904 John D. Jordan, clerk.

Endorsed on cover: (Certificate.) File No. 19,216. U. S. C. C. of appeals, 8th circuit. Term No. 565. Plymouth Cordage Company, A. B. Kelley, Newton Wagon Company, and Maggie O'Brien *vs.* J. A. Smith and Clinton F. Irwin, judge. Filed January 26th, 1904. File No. 19,216.

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1903.**

## No. 565.

PLYMOUTH CORDAGE COMPANY ET AL.,

*vs.*

J. A. SMITH ET AL.

**MOTION TO ADVANCE CERTIFICATE AND TAKE THE SAME AS SUBMITTED.**

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1903.

## No. 565.

PLYMOUTH CORDAGE COMPANY ET AL.,

*vs.*

J. A. SMITH ET AL.

MOTION TO ADVANCE CERTIFICATE AND TAKE THE SAME AS SUBMITTED.

Now on this day come the petitioners herein and move the Court to advance the certificate on the docket, and to take the same as submitted, and for grounds of such motion, allege and say:

This is a question of jurisdiction certified by the United States Circuit Court of Appeals for the Eighth Circuit, arising under the provisions of the National Bankruptcy law. That law (3 U. S. Comp. Stat., pp. 3418 *et seq.*; 30 Stat. 544 *et seq.*) provides two methods of reviewing a proceeding in an appellate court. In Section 25 (p. 3432) it is provided that an appeal may be taken in the following cases:

(*a*) From a judgment adjudging or refusing to adjudge the defendant a bankrupt;

(*b*) From a judgment granting or denying a discharge;

(*c*) From a judgment allowing or rejecting a debt or claim of $500 or over.

From this it will be seen the scope of an appeal is quite limited.

As appears from the appendix to this motion, a number of questions have arisen in bankruptcy proceedings which do not fall within the class of appealable orders and these can only be reviewed under Section 24. In Section 24*b* it is provided "the several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction."

From this reference to the law it will be observed that in Section 25 an appeal is provided in a certain class of cases, and that this class of cases is quite limited in its operation, and that under Section 24, every other question arising in a proceeding in bankruptcy may be revised "on due notice and petition by any party aggrieved."

Referring to Section 25, it will be noted that an appeal may be taken from "the courts of bankruptcy to the circuit courts of appeals of the United States and to the supreme courts of the territories." (P. 3432.)

In Section 1 of the law (p. 3419) it is provided: "Courts of bankruptcy shall include the district courts * * * of the territories." So a district court of a territory is a "court of bankruptcy" within the meaning of the law, and an appeal may be taken from a district court of a territory to the supreme court of a territory in the class of cases provided in Section 25.

Referring to Section 24*b* however, it will be observed the power to revise in matter of law by petition is limited by the language of the act to "the several circuit courts of appeal."

The supreme court of Oklahoma has decided (*in re* Stumpf, 60 Pac. 96; 9 Oklahoma, 639) the power to revise in matter of law by petition is vested entirely in the circuit court of appeals, and is not vested in the supreme court of Oklahoma. The court quoted Sections 24 and 25 of the bankrupt law, and then continues: "Subdivision (*b*) of Section 24 of the bankruptcy law applies only to circuit courts of appeals, and has no application whatever to the supreme courts of a territory. By it, circuit courts of appeals are given the right to superintend and revise in matter of law, the proceedings of the several inferior courts within their respective jurisdictions, but this provision is confined to the circuit courts of appeals."

This decision, it will be noted, was rendered February 8, 1900. (60 Pac. 96.)

Afterward, on January 14, 1901, the circuit court of appeals for the eighth circuit, decided *in re* Blair, 106 Fed. 662. In that case, the petitioners sought to revise in matter of law, the proceedings of a United States court in the Indian Territory. The circuit court of appeals called attention to the fact that "the Indian Territory is not mentioned among the territories assigned to the eighth judicial circuit." (106 Fed. 664.) Accordingly it was held the circuit court of appeals had no jurisdiction to revise in matter of law, the action of a United States court in the Indian Territory.

But *in re* Blair, *supra*, the circuit court of appeals called attention to the fact, that under Section 24*a* "the supreme courts of the territories * * * are invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases." (3 U. S. Comp. Stat., pp., 3431, 3432.) The court concluded its opinion with this language: "A petition to revise proceedings in bankruptcy, being, as we have shown, in its very nature an appellate proceeding, the provision of Section 24, which invests the 'supreme courts of the territories with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases' is adequate to invest the supreme courts of the territories with the superintending and revisory jurisdiction spoken of in subdivision (*b*)." (106 Fed., 166.)

So that *in re* Stumpf, *supra*, the Supreme Court of Oklahoma ruled it did not have jurisdiction of a petition to revise in matter of law the action of a district court of a territory in bankruptcy, and that such jurisdiction did vest in the Circuit Court of Appeals.

On the other hand, *in re* Blair, *supra*, the Circuit Court of Appeals ruled it did not have jurisdiction of a petition to revise in matter of law a ruling of a district court of the territory of Oklahoma in bankruptcy, but that such jurisdiction did vest in the Supreme Court of the Territory of Oklahoma.

In other words, the Supreme Court of Oklahoma and the Circuit Court of Appeals for the Eighth Circuit, reached directly opposite conclusions; neither cited the other, nor yielded its views to that of the other.

In this state of the law on March 23, April 6 and April 14, 1903,

certain proceedings were had in the district court of Kingfisher County, Oklahoma, in the matter of J. A. Smith, bankrupt. (Record p. 2.)

For the information of the court it may be stated a petition to revise in matter of law the proceedings of the district court of Kingfisher County, Oklahoma, was filed in the Supreme Court of Oklahoma, and also in the Circuit Court of Appeals for the Eighth Circuit.

In the Supreme Court of Oklahoma, the respondents moved to dismiss the petition to revise upon the authority of *in re* Stumpf, *supra*. In the Circuit Court of Appeals, respondents moved to dismiss the petition to revise upon the authority of *in re* Blair, *supra*.

Accordingly the Circuit Court of Appeals for the Eighth Circuit certified the question of jurisdiction to this court, and the Supreme Court of Oklahoma continued the case under advisement until the June term, 1904, of that court.

At the outset it may be premised, it is important the construction of the bankruptcy law shall be uniform in its operation. It is provided in the Constitution (Art. 1, Sec. 8): "The Congress shall have power * * * to establish * * * *uniform laws* on the subject of bankruptcy throughout the United States." The title of the bankruptcy law is "An act to establish a *uniform system* of bankruptcy throughout the United States," (30 Stat. 544; 3 U. S. Comp. Stat. p. 3418).

It was also the intention of Congress, in enacting the national bankruptcy law, to provide a speedy, and in some respects, a summary proceeding for the liquidation of the assets of an insolvent debtor. The controlling idea of the bankruptcy laws of 1898 was two fold, one to grant an honest insolvent a discharge from his obligations, and second, to divide his assets among his creditors.

In the amendatory act of February 5, 1903 (Stat. 797; U. S. Comp. Stat., 1901, p. 409), Congress amended Section 18*a* and 18*b* of the law, so as to shorten the time for the publication of a notice from six weeks to two weeks, and also shortened the time for pleading from ten days after the return day to five days after the return day. These amendments indicate the intention of Congress that proceedings in bankruptcy shall be conducted with expedition and despatch.

The importance of the question is disclosed by an inspection of

the report of bankruptcy matters made to the Department of Justice on November 20, 1903, by Edwin C. Brandenburg, in charge of bankruptcy matters. From this report, it appears that in those portions of the United States not within an organized state, the following number of proceedings in bankruptcy have been had since the enactment of the law in 1898:

Alaska, 23; Arizona, 68; District of Columbia, 312; Hawaii, 51; Indian Territory, 441; Oklahoma, 269; New Mexico, 65; Porto Rico, 19.

As appears from the Appendix, the variety of questions arising under the bankrupt law which can only be reviewed by a petition to revise, is very great. Hence it is important to the profession and to the judiciary, that the question of jurisdiction, with respect to revising in matter of law, the proceedings of district courts of the United States, sitting within a jurisdiction not a part of an organized state should be determined authoritatively by the court of last resort, and at the earliest possible moment.

So far as the petitioners are concerned, they are content to submit the question to the court upon printed briefs herewith filed.

So far as the respondents are concerned, notice of the filing of this motion has been given, and also copy of the brief has been served. It appears from the affidavit herewith submitted and made a part of this motion, that respondents have declined in any way to take any part in the question certified to the Supreme Court of the United States, and hence it may be assumed they have no desire to argue the question orally.

All of which is respectfully submitted,

EDWIN C. BRANDENBURG,
EDWIN A. KRAUTHOFF,
*For the Motion to Advance.*

BRANDENBURG & BRANDENBURG,
KARNES, NEW & KRAUTHOFF,
*of Counsel.*

## APPENDIX.

The following questions arising under the bankrupt law have been presented to the Circuit Court of Appeals on petitions to revise in matter of law:

(*a*) Original petition dismissed by district court, and thereafter other creditors intervene and ask the petition be reinstated and they be permitted to join therein (112 Fed. 966).

(*b*) Priority of payment of certain claims (91 Fed. 96).

(*c*) Validity of assignment for the benefit of creditors (92 Fed. 325).

(*d*) Power of a district court to summarily take possession of property in the hands of an assignee of creditors (93 Fed. 767).

(*e*) Dispute between sheriff and trustee in bankruptcy as to possession of property (94 Fed. 793).

(*f*) Punishment of a party for refusal to comply with an order directing him to pay over money (100 Fed. 562).

(*g*) Right of a creditor to a lien on certain property (101 Fed. 699).

(*h*) Sustaining a demurrer to a petition for the purpose of vacating an adjudication (113 Fed. 911).

(*i*) Decision of a district court on a petition claiming an ownership of funds in the hands of a trustee in bankruptcy (113 Fed. 202).

(*j*) Action of creditors with respect to the choice of a trustee (125 Fed. 226).

(*k*) Action of a district court with respect to homestead exemptions (125 Fed. 913).

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1903.**

## No. 565.

PLYMOUTH CORDAGE COMPANY ET AL.,
*Petitioners,*

*vs.*

J. A. SMITH ET AL.,
*Respondents.*

BRIEF AND ARGUMENT FOR PETITIONERS.

33387

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1903.**

## No. 565.

PLYMOUTH CORDAGE COMPANY ET AL.,
*Petitioners,*

*vs.*

J. A. SMITH ET AL.,
*Respondents.*

### BRIEF AND ARGUMENT FOR PETITIONERS.

The United States Circuit Court of Appeals for the Eighth Circuit has certified to this Court for its answer and decision, the following question:

"Does the United States Circuit Court of Appeals for the Eighth Circuit have jurisdiction to superintend and revise in matter of law, the proceedings of the District Court of Kingfisher County, Oklahoma, in bankruptcy?" (Record p. 2.)

At the outset, the Court will bear in mind, by an order of this Court, entered May 11, 1891 (139 U. S. 707), the Territory of Oklahoma was assigned to the Eighth Judicial Circuit.

The national bankruptcy act was approved July 1, 1898 (30 Stat. 545; 3 U. S. Comp. Stat. pp. 3418 *et seq.*)

In Section 1 of the Act is provided: "(3) Appellate Courts shall include the Circuit Courts of Appeals of the United States,

the Supreme Courts of the territories, and the Supreme Court of the United States. * * *

"(8) Courts of bankruptcy shall include the district courts of the United States and of the territories, the Supreme Court of the District of Columbia, and the United States Court of the Indian Territory and of Alaska. * * *

"(24) 'States' shall include the territories, the Indian Territory, Alaska and the District of Columbia."

In Section 2 of the Act it is provided: "The courts of bankruptcy, as hereinbefore defined, viz: The district courts of the United States in the several states, the Supreme Court of the District of Columbia, the district courts of the several territories and the United States courts in the Indian Territory and the District of Alaska are hereby made courts of bankruptcy." (3 U. S. Comp Stat. 3420.)

In Section 24 of the Act it is provided: "Section 24(*a*). The Supreme Court of the United States, the Circuit Courts of Appeals of the United States, and the Supreme Courts of the territories in vacation, in chambers, and during their respective terms as now, or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia."

It is next provided: "24(*b*). The several Circuit Courts of Appeals shall have jurisdiction in equity either interlocutory or final, to superintend and revise in matter of law, the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power should be exercised on due notice and petition by any party aggrieved."

In Section 25(*a*) it is provided: "Appeals as in equity cases may be taken in bankruptcy proceedings from the courts of bankruptcy to the Circuit Court of Appeals of the United States and to the Supreme Court of the territories," in certain specified cases.

An analysis of these sections discloses:

(*a*) In Section 24, "The Supreme Court of the United States, the Circuits of Appeals of the United States and the Supreme Courts of

the Territories * * * are hereby invested with appellate jurisdiction."

(*b*) In Section 24(*b*), "the several Circuit Courts of Appeals shall have jurisdiction * * * to superintend and revise in matter of law."

(*c*) In Section 25, "appeals * * * may be taken * * to the Circuit Court of Appeals of the United States, and to the Supreme Courts of the territories."

It is exceedingly important that every matter arising in a proceeding in bankruptcy may be the subject of an appellate proceeding. It is provided in the Constitution (Art. 1, Sec. 8): "The Congress shall have power * * * to establish * * * *uniform* laws on the subject of bankruptcy throughout the United States." By virtue of this grant of power, Congress passed "an Act to establish a *uniform* system of bankruptcy throughout the United States." (30 Stat. 544; 3 U. S. Comp. Stat. p. 3418.)

It will be recalled the enactment of the bankruptcy law produced a flood of diverse and contrary judicial views. Several of these questions reached this Court on certificate, on certiorari or on appeal, and it devolved upon this Court to enforce the bankruptcy act in the spirit in which it was written, and to lay down a uniform rule for its enforcement.

The importance of an appeal in a proceeding in bankruptcy is outlined *in re* Abraham, 93 Fed. 767. In that case, speaking for the Circuit Court of Appeals for the Fifth Circuit, McCormick, J., observed (after quoting Section 25(*a*) providing for an appeal in certain specific cases): "The judgment, order or decree appealed from in this case is not embraced in either of the three classes of cases as just recited from the statute." Judge McCormick cites Section 24(*b*) investing the Circuit Court of Appeals with jurisdiction to superintend and revise in matter of law, the proceedings of the several inferior courts of bankruptcy within their jurisdiction.

Reference is then made to the act of 1867, and to a decision rendered by Mr. Chief Justice Chase, *in re* Alexander, (Fed. Cas. No. 160). The Chief Justice reached this conclusion: "The better, and indeed, as it seems to me, the only construction which gives due effect to all parts of the act relating to appellate jurisdiction, seems to be that which on the one hand excludes from the category of general superintendence and jurisdiction of the Circuit

Court the appellate jurisdiction defined by the eighth section (of the law of 1867) and on the other hand brings within that category all decisions of the district court or the district judge at chambers which cannot be reviewed upon appeal or writ of error under the provisions of that section."

After citing that case Judge McCormick observed: "It was the intent of Congress that the exercise of such jurisdiction (the jurisdiction to superintend and revise in matter of law) can be easily invoked by any party aggrieved and should be freely exerted by Circuit Courts of Appeals without the hindrance of technical trammels." (93 Fed. 783.)

In the case of Burleigh v. Foreman, 125 Fed. 217, it was sought to dismiss an appeal for the reason that it did not come within the terms of Section 25(*a*). It was held (PUTNAM, J.): " * * * an appeal should be allowed in the present case. A construction of the bankruptcy act of 1898 which would lead to a different conclusion, would be monstrous. It would give a single judge absolute power over questions of fact concerning estates in bankruptcy, no matter how immense, while no such power exists in any other branch of the Federal judicial jurisdiction."

These citations make it clear in every question arising under the bankruptcy law, an appeal should be granted to a reviewing tribunal, so that the construction of the law may be uniform. In Section 25(*a*) certain grounds of appeal are specified. Under Section 24(*b*), whatever is not appealable under Section 25(*a*) may be reviewed on a petition to superintend and revise in matter of law.

The question, then, to be determined by this Court is, shall the petition to revise be filed in the Supreme Court of Oklahoma or in the Circuit Court of Appeals for the Eighth Circuit?

As already indicated, Oklahoma has been assigned to the Eighth Judicial Circuit, and the precise language of Section 24(*b*) is "the several Circuit Courts of Appeals shall have jurisdiction * * * to superintend and revise in matter of law, the proceedings of the several inferior courts of bankruptcy within their jurisdiction."

*In re* Seebold, 105 Fed. 910, suit was brought in a state court, judgment recovered and execution issued. The defendant in the suit in the state court was thereupon adjudicated a voluntary bankrupt in the *District* Court of the United States for the eastern district of Louisiana. The judge of that court certified the question

to the *Circuit* Court of the United States for the eastern district of Louisiana. The Circuit Court proceeded to judgment, and thereupon a petition to revise in matter of law was filed in the Circuit Court of Appeals for the Fifth Circuit. Judge McCormick cited Section 24(*b*) of the law, and then continued: "The words 'within their jurisdiction' manifestly relate to territorial limits, confining this court to the exercise of the jurisdiction conferred to superintend and revise in matter of law, the proceedings of the several courts of bankruptcy in this circuit." (105 Fed. 914.) Accordingly it was held the Circuit Court of Appeals had jurisdiction of a petition to revise and superintend in matter of law.

Unquestionably a district court of the Territory of Oklahoma is within the *territorial jurisdiction* of the Circuit Court of Appeals for the Eighth Circuit.

The precise question presented by the certificate in the case at bar has been answered by the Supreme Court of Oklahoma in the affirmative.

*In re* Stumpf, 60 Pac. 96, 9 Oklahoma, 639.

In that case a claim in a sum less than $500.00 was allowed by a district court, and an appeal was taken to the Supreme Court of Oklahoma. It was held the order complained of was not the subject of an appeal because it was less than $500.00. The court continues: "It has been held under subdivision (*b*) of Section 24 that the Circuit Courts of Appeals have jurisdiction in equity to superintend and revise in matter of law, the proceedings of the several inferior courts of bankruptcy within their jurisdiction, even though the amount involved is less than $500.00, and that such jurisdiction applies to an interlocutory order as well as to a final judgment, but subdivision (*b*) of Section 24 of the bankruptcy law applies only to Circuit Courts of Appeals and has no application whatever to the Supreme Courts of a Territory."

It is respectfully submitted under the language of the statute, the ruling of the Supreme Court of Oklahoma is correct, and the question certified should be answered in the affirmative. Several cases of importance have arisen under the national bankruptcy law, and this Court has always construed the law as it was written.

Thus in Pirie v. Chicago Title & Trust Co., 182 U. S. 438, it was contended that certain sections of the statute should be read into other sections of the statute. The court observes: "Undoubt-

edly all the sections of the act must be construed together as means to effect its purpose. * * * It does not follow, however, that each section should not be given the meaning its language conveys, if clear and consistent. It does not follow that because the terms of a section are defined elsewhere, or the consequences of its provisions are expressed elsewhere, it (the section) becomes a nullity or is defective. * * * The law has made its definition of insolvency, whatever the effect may be, and has determined by that definition consequences not only to the debtor, but to his creditors, and to purchasers of his property." (182 U. S. 449, 451.)

The court continues: "* * * The intent of the statute (is) to be looked for in its words. Where they are clear and involve no absurdity, they are its only expositors. It is not contended that the provisions which we are considering are not clearly expressed and adequate to convey a definite meaning." (182 U. S. 451.)

In the Pirie case the conclusion was reached that as Congress had provided for a return of a payment received while the debtor was insolvent, irrespective of reasonable cause to believe on the part of the creditor, the court had no power to construe the law otherwise than as it was written, and the law was enforced as enacted.

In West Co. v. Lea, 174 U. S. 590, this Court construed the making of a general assignment for the benefit of creditors to be an act of bankruptcy, without reference to the solvency of the assignor. The court set forth Section 3 of the Act in full (174 U. S. 592-594). The court said "It will be observed that the section is divided into several paragraphs denominated as *a*, *b*, *c*, *d*, and *e*." The Act was then construed as it was written, and it was held the solvency of the assignor was no defense in a proceeding in bankruptcy brought on the ground the assignor had made a general assignment for the benefit of his creditors.

In Bardes v. Hawarden Bank, 178 U. S. 524, it was strongly urged that a district court having jurisdiction to adjudge a person a bankrupt, had the further jurisdiction to entertain a suit brought by a trustee in bankruptcy to recover assets of the estate. It will be recalled that most of the district courts, and several of the Circuit Courts of Appeals in the United States had upheld such a jurisdiction. It was contended that a court having adjudged a person a bankrupt should not be required to send the officer of the court into the courts of another jurisdiction for the purpose of recovering the

property of the bankrupt. The Supreme Court, however, construed the law as written.

With these principles in mind, we approach the decision in the Circuit Court of Appeals for the Eighth Circuit *in re* Blair, 106 Fed. 662. In that case, it was sought to revise in matter of law the proceedings of a United States Court in the Indian Territory. Judge Caldwell stated: "It will be observed that the Indian Territory is not mentioned among the territories assigned to the Eighth Judicial Circuit." So far the opinion of the court is correct. In other words, as the Indian Territory was not a part of the Eighth Judicial Circuit, the Circuit Court of Appeals did not, under Section 24 (*b*) have "jurisdiction * * * to superintend and revise in matter of law the proceedings" of an inferior court of bankruptcy in the Indian Territory, because the Indian Territory was not "within their jurisdiction."

This reasoning, however, does not apply to the Territory of Oklahoma. As already stated, Oklahoma is "within their jurisdiction." The court, however, decided further a Circuit Court of Appeals had no jurisdiction to superintend and revise in matter of law, the proceedings of an inferior court of bankruptcy in a territory under any circumstances, and to this extent we respectfully submit the opinion is *obiter dicta* and should not be followed as authority. Judge Caldwell observed: "The bankrupt court must be within the jurisdiction of the United States Circuit Courts of Appeals before these courts can superintend or revise the proceedings of the former." He continues: "The phrase 'within their jurisdiction' has reference to an existing jurisdiction, *and an existing appellate jurisdiction* and has to be construed the same as if it read '*within their appellate jurisdiction.*'"

In other words, the court interpolated the word "appellate" into the statute. It is respectfully submitted in the light of the authorities hereinbefore quoted, the law should be construed as it is written, and the Circuit Court of Appeals for the Eighth Circuit had no more authority to interpolate the word appellate into the statute than did this court have the right to interpolate the word "insolvent" into a making of a general assignment for the benefit of creditors in West Co. v. Lea, *supra*, or to interpolate "reasonable cause for belief" on the part of one receiving a payment from an insolvent debtor, in Pirie vs. Chicago Title & Trust Company, or to

interpolate jurisdiction in a district court of a suit by a trustee in bankruptcy in Bardes v. Hawarden Bank.

There is in the District of Columbia a Court of Appeals. There is also a court of first instance known as the Supreme Court. By the act establishing the Court of Appeals, appeals are taken from the Supreme Court of the District of Columbia to the Court of Appeals of the District of Columbia (1 U. S. Comp. Stat. 572) and the Supreme Court of the United States has jurisdiction of appeals and writs of error from the Court of Appeals of the District of Columbia in certain instances (1 U. S. Comp. Stat. 573). In other words, the Supreme Court of the District of Columbia, at the time the national bankruptcy act was passed, was not within the *appellate jurisdiction* of the Supreme Court of the United States. It was within the appellate jurisdiction of the Supreme Court of the District of Columbia.

In Audubon v. Shufeldt, 181 U. S. 575, a direct appeal was taken from the Supreme Court of the District of Columbia to the Supreme Court of the United States, and the appeal was entertained and disposed of on the merits; no question of jurisdiction being interposed. This action of the court is warranted by the precise language of the statute, Section 24(*a*): "* * * The Supreme Court of the United States shall exercise like jurisdiction * * * from the Supreme Court of the District of Columbia."

It may be true as indicated by Judge Caldwell *in re* Blair, 106 Fed. 662, 665: "The dividing line between the judgment and orders of the bankrupt court which can be reviewed by appeal or writ of error only, and those which may be reviewed by petition for review is somewhat obscure and shadowy."

It is also true that appeals have been treated as petitions to revise. (*In re* Abraham, 93 Fed. 767; Chesapeake Shoe Co. v. Seldner, 122 Fed. 593.)

From this it may be argued, it was not the intention of Congress, that some orders of a district court of a territory should be reviewed on appeal to the Supreme Court of the territory, and that other orders should also be reviewed on a petition to revise by a Circuit Court of Appeals. But that one appellate tribunal, the Supreme Court of the territory should be held vested with both species of appellate jurisdiction, that is by appeal and also by petition to revise.

An interesting fact in this connection is a literal reading of Sections 24 and 25 of the National Bankruptcy Law discloses:

1. *Three* classes of courts, the Supreme Court of the United States, the Circuit Courts of Appeals and the Supreme Courts of the territories are invested in broad terms with appellate jurisdiction.

2. *Two* classes of courts, the Circuit Courts of Appeals and the Supreme Courts of the territories may take cognizance of appeals in instances specified in the act.

3. *One* class of courts, the Circuit Courts of Appeals have jurisdiction to superintend and revise in matter of law the proceedings of inferior courts of bankruptcy.

In other words, there is no express provision of law giving the Supreme Court of the United States jurisdiction of an appeal. Section 25(*a*) providing for appeals mentions only the Supreme Courts of territories and the Circuit Courts of Appeals, but in Audubon v. Shufeldt, 181 U. S. 575, the Supreme Court of the United States entertained an appeal from the Supreme Court of the District of Columbia, the opinion being written by that careful and accomplished jurist, Mr. Justice GRAY. The question of jurisdiction was not raised, nor did the court suggest it of its own motion.

On the other hand, there is a marked difference between a petition to revise in matter of law and an appeal.

Appeals bring up "both the law and the facts." Collier on Bankruptcy, Hotchkiss Ed. P. 265.

In the case of an appeal, "the facts as well as the law are before this court for review." (96 Fed. 935, 937; 101 Fed. Rep. 699, 702.)

But in Section 24(*b*), the petition to revise and superintend is restricted to "matter of law."

As pointed out in Burleigh v. Foreman, 125 Fed. 217, 219, a litigant may "where a question of law is concerned, take the less expensive and the more summary manner of raising that question by a revisory petition."

"In the case of an original petition this court (a Circuit Court of Appeals) has authority to review merely a matter of law arising in the course of the proceeding below. A petition to review is intended as a summary mode of reviewing any supposed erroneous holding upon a question of law, and does not contemplate a review of the facts." (96 Fed. 935, 937.)

With this differentiation in mind, that is an appeal brings up both the law and the facts, while a petition to review brings up only the law, it is easy to see that Congress intended in the case of a petition to superintend and revise in matter of law, a litigant should have the right to go direct from a District Court of a territory to a Circuit Court of Appeals.

Let us consider for a moment, the composition of the Supreme Court of a territory. In Oklahoma, for example, there are seven judges of the Supreme Court, each of whom is assigned to a separate district. One of these district judges in the year 1903, at *nisi prius* disposed of over 900 cases, as judge of the Supreme Court he wrote 15 opinions and participated in the decision of some 100 or more cases. The Supreme Court of the territory meets only at intervals, in Oklahoma in January and June. The Circuit Court of Appeals for the Eighth Circuit is practically in continuous session, and the judges composing that court, devote themselves almost entirely to their appellate duties.

The cases speak of a petition to superintend and revise in matter of law as a summary proceeding. That is to say it is a proceeding to be conducted with expedition and despatch.

In the very nature of things a petition to superintend and revise in matter of law filed in the Supreme Court of the territory cannot be summary, because the court may not be in session for some five or six months to come.

An interesting question arises under the law creating the Circuit Courts of Appeals. It is provided in Section 15 of that Act (1 U. S. Comp. Stat. p. 554): "The Circuit Court of Appeal in cases in which the judgments of the Circuit Courts of Appeal are made final by this act, shall have the same appellate jurisdiction by writ of error or appeal to review the judgments, orders and decrees of the Supreme Courts of the several territories as by this act they may have to review the judgments, orders and decrees of the District Court and Circuit Courts."

This section was construed in Aztec Mining Co. v. Ripley, 151 U. S. 79. It was there held a case decided by a Supreme Court of a territory, not in admiralty, nor arising under the criminal, revenue or patent laws of the United States, nor between aliens and citizens of the United States, nor between citizens of different states, was not a case in which a judgment of the Circuit Court of Appeals

would have been final under the act creating the Court of Appeals, and hence an appeal did not lie from the Supreme Court of a territory to a Circuit Court of Appeals. This was before the enactment of the National Bankruptcy Act.

In some quarters the impression prevails the bankruptcy law is complete and sufficient in itself, and is to be construed without reference to any other statute. It is respectfully submitted this is erroneous. The bankruptcy law is a part of the general federal jurisprudence and is to be construed with reference to the system of which it is a constituent part.

The case of Bardes v. Hawarden Bank came before this Court in two aspects. On its first arrival (175 U. S. 526) the District Court of the United States for the Northern District of Iowa, certified direct to the Supreme Court of the United States, a question of jurisdiction. This court called attention to Section 25(*d*) of the Bankruptcy Law: "Controversies may be certified to the Supreme Court of the United States from other Courts of the United States;" but in the same connection, this Court referred to the various sections of the law creating the Circuit Court of Appeals. It was held, as a question of jurisdiction could not be certified by a District Court direct to the Supreme Court in advance of judgment rendered by a District Court, the certificate must be dismissed. Afterward the case went to judgment, the question of jurisdiction was certified, and the case decided on its merits. (178 U. S. 524.)

In Elliott v. Toeppner, 187 U. S. 327, this Court construed the National Bankruptcy Law as a part of a general federal system of jurisprudence. It was held the trial of an involuntary bankrupt before a jury or a trial at common law, and the proceedings had in the court of first instance could only be preserved by a bill of exceptions. The various provisions of the Bankruptcy Law are quoted and also Section 566 of the General Statutes.

Previously in Denver First National Bank v. Klug, 186 U. S. 202, the provisions of the Bankruptcy Law were quoted, and the Court continues: "Our jurisdiction of this appeal depends on the act of March 3, 1891." (Referring to the act creating Circuit Court of Appeals.) It was further held the decisions of the Circuit Courts of Appeals "might be reviewed here on certiorari or in certain cases by appeal under Section 6 of the Act of 1891." (186 U. S. 205.)

In Mueller v. Nugent, 184 U. S. 1, the Supreme Court of the United States issued a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit under the provisions of the act creating Circuit Courts of Appeals.

Referring to the essential difference between an appeal and a petition to superintend and revise in matter of law, the Supreme Court of the United States in Elliott v. Toeppner, 187 U. S, 327, 334, quoted Section 24(*b*) of the Bankruptcy Act (which gives the Circuit Courts of Appeal jurisdiction to superintend and revise in matter of law the proceedings of inferior courts of bankruptcy), and then stated: "This is confined to questions of law and does not contemplate a review of the facts."

Section 25(*a*) providing for appeals in certain instances is then quoted, and the Court continues: "The distinction between a writ of error which brings up matter of law only, and an appeal which, unless expressly restricted, brings up both law and fact, has always been observed by this Court and been recognized by the legislation of Congress from the foundation of the government."

As showing an important difference between a petition to superintend and revise in matter of law and an appeal, *in re* Jamison Mercantile Company, 112 Fed. 966, may be noted. It was contended by the respondents the proceeding in the Circuit Court of Appeals was by appeal and "that it is subject to the regulations affecting appeals generally," and that the appeal had not been taken as required by law. It was held the proceeding was by petition to superintend and revise in matter of law and was not subject to the rules and limitations affecting appeals.

From the foregoing it appears the Supreme Court has practically construed the National Bankruptcy Law and the act creating Circuit Court of Appeals as part of a general system of jurisprudence each depending on and a part of the other.

In Holden v. Stratton (decided by this Court, November 16, 1903, 24 Sup. Ct. Rep. 45, 191 U. S. 115), an appeal was taken from the United States Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States. It appeared the jurisdiction of the Circuit Court of Appeals had been invoked on an original petition under Section 24(*b*), giving the Circuit Court of Appeals jurisdiction to superintend and revise in matter of law the proceedings of inferior courts of bankruptcy. It was held by this

Court, the proceeding in the Circuit Court of Appeals was within the class wherein the judgment of the Circuit Court of Appeals became final, and hence an appeal did not lie to the Supreme Court of the United States. The court cited the act creating the Circuit Court of Appeals, and also the provisions of the National Bankruptcy Law.

Reading then the National Bankruptcy Law and the act creating Circuit Courts of Appeals together, it is clear in that class of cases of which the Circuit Court of Appeals has jurisdiction by reason of its power to superintend and revise in matter of law, the judgment of the Circuit Court of Appeals is final and no appeal lies to the Supreme Court of the United States, except in certain instances specified in the National Bankruptcy Law (Section 25(*b*), 3 U. S. Comp. Stat. p. 3432).

So that having in mind the judgment of the Circuit Court of Appeal becomes final in this class of cases, and recurring to Section 15 of the act creating Circuit Courts of Appeals (1 U. S. Comp. Stat. p. 554), it will be noted the Circuit Court of Appeals "in cases in which the judgment of the Circuit Courts of Appeals are made final by this act" shall have the same jurisdiction over the Supreme Courts of the territories as they have over the District and Circuit Courts within their circuit. Hence it is fairly deducible from the statutes and authorities cited that if a case is taken to the Supreme Court of Oklahoma by appeal, the case can then be taken by appeal from the Supreme Court of Oklahoma to the Circuit Court of Appeals for the Eighth Circuit.

In Shute v. Keyser, 149 U. S. 649, it was pointed out by this Court that "an appeal or writ of error lies to this Court from the judgment or decrees of those courts (the Supreme Courts of the territories), except in cases where the judgments of the Circuit Courts of Appeal are made final." (651.)

So that in the light of the act creating the Circuit Courts of Appeals, and of the National Bankruptcy Law, it is fair to presume:

(*a*) Congress provided an appeal from a District Court of a territory to a Supreme Court of a territory in certain specified instances. This appeal brought up both the law and the facts. After a case was decided by the Supreme Court of the territory, a

further appeal lay to the Circuit Court of Appeals under Section 15 of the act creating the Circuit Courts of Appeals.

(*b*) The petition to superintend and revise in matter of law was intended to be summary in its operation and to present only a question of law, hence Congress provided the Circuit Courts of Appeals under Section 24(*b*) should exercise direct jurisdiction over a District Court of a territory by petition to superintend and revise in matter of law, without the intervention of the Supreme Court of the territory.

Accordingly it is respectfully submitted the questions certified should be answered in the affirmative.

EDWIN C. BRANDENBURG,
EDWIN A. KRAUTHOFF,
*For the Petitioners.*

PATRICK S. NAGLE,
W. A. McCARTNEY,
BRANDENBURG & BRANDENBURG,
KARNES, NEW & KRAUTHOFF,
*of Counsel.*

# Supreme Court of the United States.

No. 565.—October Term, 1903.

Plymouth Cordage Company, A. B. Kelley, Newton Wagon Company and Maggie O'Brien
*vs.*
J. A. Smith and Clinton F. Irwin, Judge.

On a certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[May 16, 1904.]

This was a petition to the Circuit Court of Appeals for the Eighth Circuit to superintend and revise in matter of law certain proceedings in bankruptcy had in the District Court of Kingfisher County, Oklahoma, on which a question or proposition of law arose concerning which that court desired the instruction of this court, and accordingly granted a certificate setting forth: (1) Section 24 *a*, *b*, of the bankruptcy law; (2) The order of this court of May 11, 1891, assigning the Territory of Oklahoma to the Eighth Judicial Circuit, pursuant to section 15 of the judiciary act of March 3, 1891; (3) The filing of the petition to superintend and revise in matter of law the proceedings of the District Court of Kingfisher County, Oklahoma, in the following particulars:

"(*a*.) On March 23, 1903, a petition was pending in said court to adjudge J. A. Smith an involuntary bankrupt. The District Court on that date permitted three creditors to withdraw from said petition.

"(*b*.) On April 6, 1903, the District Court of Kingfisher County, Oklahoma, sustained a motion to dismiss a petition in involuntary bankruptcy theretofore filed against J. A. Smith.

"(*c*.) On April 6, 1903, the District Court of Kingfisher County, Oklahoma, denied the prayer of certain creditors of J. A. Smith asking leave to join in the petition in involuntary bankruptcy against J. A. Smith.

"(*d*.) On April 14, 1903, the District Court of Kingfisher County, Oklahoma, refused to permit certain creditors of J. A. Smith to file a motion asking the court to set aside the order of April 6, 1903, dismissing the petition in involuntary bankruptcy against J. A. Smith."

(4.) That petitioners prayed the court "to set aside each and all of the foregoing orders so entered by the District Court of Kingfisher County, Oklahoma."

And propounding the following question or proposition of law:

"Does the United States Circuit Court of Appeals for the Eighth Circuit have the jurisdiction to superintend and revise in matter of law the proceedings of the District Court of Kingfisher County, Oklahoma, in bankruptcy?"

Mr. Chief Justice FULLER delivered the opinion of the Court:

By the bankruptcy law, the District Courts of the United States in the several States, the Supreme Court of the District of Columbia, the District Courts of the several Territories and the United States courts in the Indian Territory and the District of Alaska are made courts of bankruptcy.

By subdivision 3 of section 1 the words "appellate courts" are defined to "include the Circuit Courts of Appeals of the United States, the Supreme Courts of the Territories, and the Supreme Court of the United States."

"Appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases," is vested by section 24*a* in the Supreme Court of the United States, the Circuit Courts of Appeals of the United States, and the Supreme Courts of the Territories. And by section 24*b* it is provided that the several Circuit Courts of Appeals shall have jurisdiction in equity "to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction."

By section 25*a* appeals "as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the Circuit Court of Appeals of the United States, and to the Supreme Court of the Territories" from judgments adjudging or refusing to adjudge the defendant a bankrupt; granting or denying a discharge; and allowing or rejecting a claim of five hundred dollars or over.*

The act clearly distinguishes between "controversies arising in bankruptcy proceedings" and "bankruptcy proceedings" proper, and between

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*SEC. 24. Jurisdiction of Appellate Courts. *a.* The Supreme Court of the United States, the Circuit Courts of Appeals of the United States, and the Supreme Courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.

*b.* The several Circuit Courts of Appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

SEC. 25. Appeals and Writs of Error. *a.* That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the Circuit Court of Appeals of the United States, and to the Supreme Court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment ap-

supervisory jurisdiction in a summary way in matter of law, and jurisdiction by appeal or writ of error. Appellate jurisdiction over controversies, as in other cases, is vested by section 24*a*, and over certain designated bankruptcy proceedings by section 25*a*, by appeal, as in equity cases, bringing up both law and fact.

The question before us arises on a petition to revise certain proceedings in a court of bankruptcy of the Territory of Oklahoma. That Territory by order of this court, as required by law, was assigned in 1891 to the Eighth Judicial Circuit, (139 U. S. 707,) and the courts of the Territory were thereby brought within the appellate jurisdiction of the Circuit Court of Appeals for that circuit.

By the judiciary act of March 3, 1891, that jurisdiction embraced the review of the judgments, orders and decrees of the Supreme Courts of the Territories in cases in which the judgments of the Circuit Courts of Appeals were made final by that act, but in other cases the jurisdiction remained in this court. *Shute* v. *Keyser*, 149 U. S. 649.

Then came the bankruptcy law making the District Courts of the Territories courts of bankrutcy, and providing that their proceedings as such might be revised by the Circuit Courts of Appeals within whose jurisdiction they happened to be.

We think the law should be taken as it is written, and perceive no adequate reason for concluding that the real intention of Congress is not expressed in the language used. Congress may well have believed it wisest that the Circuit Courts of Appeals should deal in this summary

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pealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

*b*. From any final decision of a Court of Appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

*c*. Trustees shall not be required to give bond when they take appeals or sue out writs of error.

*d*. Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

way with questions of law arising in the progress of bankruptcy proceedings in the Territorial courts, although jurisdiction by appeal or writ of error, and by appeal, as provided, was vested in the Supreme Courts of the Territories.

The Circuit Court of Appeals for the Fifth Circuit has announced the same conclusion, *In re Seebold*, 105 Fed. Rep. 910, 914; as has the Supreme Court of Oklahoma, *In re Stumpf*, 9 Oklahoma, 639. A different view appears to have been entertained by the Circuit Court of Appeals for the Eighth Circuit in *In re Blair*, 106 Fed. Rep. 662, though apparently the case did not necessarily require the precise question to be passed on.

*Question answered in the affirmative.*

True copy.

Test:

*Clerk Supreme Court, U. S.*